

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

GEORGE HARP,	)	Civ. No. 11-4149
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' ANSWER TO
	)	PLAINTIFF'S COMPLAINT
DOUGLAS WEBER, Warden, South	)	
Dakota State Penitentiary;	)	
ROBERT DOOLEY, Warden, Mike	)	
Durfee State Prison;	)	
DR. EUGENE REGIER, South Dakota	)	
Department of Health; and	)	
DR. MELVIN WALLINGA, South	)	
Dakota Department of Health,	)	
	)	
Defendants.	)	

Defendants Douglas Weber, Robert Dooley, Dr. Eugene Regier, and Dr. Melvin Wallinga, by and through their attorney of record, Assistant Attorney General Matt Roby, hereby answer the Plaintiff's Complaint as follows:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Defendants deny each and every allegation contained in Plaintiff's Complaint, except allegations that are specifically admitted or qualified herein.
3. Defendants admit that George Harp is currently an inmate in the custody of the South Dakota Department of Correction, and that he was incarcerated at the time the action was filed. Mr. Harp is currently housed at the South Dakota State Penitentiary in Sioux Falls, South Dakota.
4. Defendant Douglas L. Weber admits that he is employed by the South Dakota Department of Corrections as the Director of Prison Operations and Chief

Warden of the South Dakota State Penitentiary. Defendants specifically deny any and all other allegations or claims made in the Plaintiff's Complaint with respect to Douglas Weber.

5. Defendant Robert Dooley admits that he is employed by the South Dakota Department of Corrections as the Warden of the Mike Durfee State Prison in Springfield, South Dakota. Defendants specifically deny any and all other allegations or claims made in the Plaintiff's Complaint with respect to Robert Dooley.

6. Defendants admit that Dr. Eugene Regier is a medical doctor licensed to practice in the State of South Dakota and employed by the South Dakota Department of Health. Dr. Regier provides medical care to inmates at the South Dakota Penitentiary in Sioux Falls. Defendants specifically deny any and all other allegations or claims made in the Plaintiff's Complaint with respect to Dr. Regier.

7. Defendants admit that Dr. Melvin Wallinga is a medical doctor licensed to practice in the State of South Dakota and employed by the South Dakota Department of Health. Dr. Wallinga provides medical care to inmates at the Mike Durfee State Prison in Springfield, South Dakota. Defendants specifically deny any and all other allegations or claims made in the Plaintiff's Complaint with respect to Dr. Wallinga.

8. Defendants specifically deny that they have in any way violated George Harp's federal or state statutory or constitutional rights or caused him any injury.

### **AFFIRMATIVE DEFENSES**

9. Defendants affirmatively allege that the Plaintiff has failed to state a claim for which relief may be granted.

10. Defendants affirmatively allege that this action against them, in their official capacities, is barred by the Eleventh Amendment to the United States Constitution.

11. Defendants affirmatively allege that this action is barred against them to the extent they were acting only in a supervisory capacity.

12. Defendants affirmatively allege that at all times material, they were acting within the scope of their employment and are entitled to qualified immunity.

13. Defendants affirmatively allege that this action may be barred by Article III, Section 27 of the South Dakota Constitution, SDCL §§ 21-32-17 and 21-32A-2, and by the Eleventh Amendment to the United States Constitution.

14. Defendants affirmatively allege that this action is barred by Plaintiff's failure to exhaust his administrative remedies as required by the Prison Litigation Reform Act.

15. Defendants affirmatively allege that this action is barred by SDCL §§ 3-21-8 and 3-21-9.

16. Defendants affirmatively allege that Plaintiff's claim is barred by the provisions of 42 U.S.C. § 1997(e).

17. Defendants affirmatively allege that Plaintiff's claim is barred by the doctrine of sovereign immunity.

WHEREFORE, Defendants pray that the Plaintiff's Complaint be dismissed on the merits, that judgment be entered in favor of Defendants, that Defendants

recover their costs and disbursements, including attorney fees under 42 U.S.C. § 1988, and for such other and further relief that the Court deems proper.

Dated this 24th day of February, 2012.

/s/ Matt Roby  
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Pierre, South Dakota 57501-8501  
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#### DEMAND FOR JURY TRIAL

Defendants request trial by jury on all issues of fact.

#### CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern Division by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

George Harp #54099  
South Dakota State Penitentiary  
P.O. Box 5911  
Sioux Falls, SD 57117-5911

/s/ Matt Roby  
Matt T. Roby  
Assistant Attorney General